

Criminal and Civil Legal Protection for Female Students as Victims of Sexual Violence in Islamic Boarding Schools

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Abstract

Sexual violence against female students in Islamic boarding schools constitutes a serious violation of human rights and reveals structural deficiencies in legal protection within religious-based educational institutions. This study examines the scope and effectiveness of criminal and civil legal protection for female students as victims of sexual violence in Islamic boarding schools in Indonesia. The research employs a normative juridical method, using statutory, conceptual, and case approaches. Primary legal materials include the Indonesian Criminal Code, Law No. 12 of 2022 on the Crime of Sexual Violence, Law No. 35 of 2014 on Child Protection, and regulations concerning witness and victim protection. The case approach focuses on the Decision of the Central Java High Court Number 238/PID.SUS/2025/PT SMG, which affirmed the conviction of a pondok pesantren caretaker for committing sexual violence against female students and imposed both imprisonment and restitution obligations. The case illustrates that criminal legal protection in Indonesia predominantly emphasizes punitive sanctions against perpetrators, reflecting a retributive justice orientation. However, the implementation of civil legal protection, particularly victims' rights to restitution, compensation, and long-term psychological recovery, remains limited and inconsistently enforced. The study finds that unequal power relations, institutional protection of perpetrators, and social stigma continue to hinder victims' access to comprehensive justice. This research concludes that effective legal protection requires an integrated framework combining criminal accountability, civil liability of perpetrators and educational institutions, and a victim-centered recovery approach, supported by strengthened state supervision over Islamic boarding schools to ensure substantive justice for female students.

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1. INTRODUCTION

Islamic boarding schools play a strategic role in the Indonesian education system, not only as institutions of religious learning but also as centers of moral formation and character development. With millions of students, many of whom are minors, living and studying in closed residential environments, Islamic boarding schools are entrusted with high social authority and legitimacy (Zamakhsyari Dhofier, 2011: 44).

However, recent developments indicate that these institutions are not immune to acts of sexual violence, particularly against female Islamic boarding school students (santriwati), which has raised serious legal and human rights concerns. Sexual violence

against female Islamic boarding school students constitutes a serious violation of human dignity, bodily autonomy, and the fundamental right to security. In the context of Islamic boarding school hotels, such violence is often exacerbated by unequal power relations between educators or caregivers and students, the residential nature of the institution, and a culture of silence justified by religious authority and the institution's reputation (Eko Prasetyo, 2020: 201). These conditions often prevent victims from reporting abuse and accessing justice through formal legal mechanisms. In recent years, Indonesia has witnessed several cases of sexual violence within Islamic boarding school environments that have attracted national attention and prompted legal reform. One of the most significant developments is reflected in the Central Java High Court Decision No. 238/PID.SUS/2025/PT SMG, which upheld the conviction of an Islamic boarding school caretaker for committing sexual violence against a female Islamic boarding school student. This ruling is noteworthy not only for imposing a severe criminal sentence but also for recognizing the importance of restitution as part of legal protection for victims. This case illustrates the growing judicial recognition that sexual violence in educational and religious institutions must be addressed through a punitive and restorative legal approach.

From a normative perspective, the Indonesian legal system provides a framework for protecting victims of sexual violence through criminal and civil legal instruments. Criminal legal protection primarily aims to punish perpetrators and prevent future crimes, as stipulated in the Criminal Code and reinforced by Law No. 12 of 2022 concerning Crimes of Sexual Violence. Meanwhile, civil legal protection focuses on restoring victims' rights through restitution, compensation, and rehabilitation, including psychological and social rehabilitation. However, the implementation of this protection remains problematic in practice, particularly in cases involving religious institutions with strong social influence and internal authority structures.

Furthermore, the coexistence of formal state law and informal religious norms often creates ambiguity in law enforcement. In many cases, institutional leaders prioritize internal resolution mechanisms or moral sanctions over reporting crimes to law enforcement authorities, thereby weakening victims' access to justice and legal certainty. This situation contradicts the principle of the rule of law and the state's constitutional obligation to protect children and vulnerable groups from violence and exploitation.

Given these conditions, a comprehensive legal analysis of criminal and civil protection for female students as victims of sexual violence in Islamic boarding schools is urgently needed. By examining legislation and judicial practices—specifically through an analysis of Decree Number 238/PID.SUS/2025/PT SMG—This study seeks to evaluate the effectiveness of existing legal mechanisms and identify gaps that hinder the realization of victim-centered justice. Strengthening legal accountability, institutional responsibility, and state oversight is crucial to ensuring that Islamic boarding schools remain safe educational environments and that victims receive meaningful protection and justice under the law.

Despite comprehensive legal instruments governing the prevention and handling of sexual violence, cases of sexual harassment against female students in Islamic boarding schools (*pesantren*) continue to occur. The closed residential system of Islamic boarding schools, combined with hierarchical power relations and strong religious authority, often places female students in vulnerable positions and limits their access to legal protection. Although criminal law mechanisms increasingly impose severe sanctions on perpetrators, as reflected in the Central Java Supreme Court Decision No. 238/PID.SUS/2025/PT SMG, the realization of civil legal protection—particularly restitution, compensation, and

psychological recovery for victims—remains inadequate and inconsistently implemented. Furthermore, the coexistence of state law and internal institutional norms within Islamic boarding schools often leads to ambiguity in law enforcement, where institutional interests and social stigma prevent victims from seeking justice. This situation raises fundamental legal questions regarding the effectiveness of existing criminal and civil protection frameworks, the extent of institutional responsibility, and the role of the state in ensuring victim-centered justice. Therefore, a normative legal analysis is needed to identify gaps in legal protection and formulate an integrated approach that ensures comprehensive protection for female students as victims of sexual violence in Islamic Boarding Schools.

2. RESEARCH METHOD

This study employs normative juridical legal research (doctrinal research), which focuses on examining the legal norms, principles, and doctrines governing the protection of female students as victims of sexual violence in Islamic boarding schools. Normative juridical research is appropriate because it analyzes laws and regulations, legal concepts, and court decisions to assess the adequacy and coherence of criminal and civil legal protection in the Indonesian legal system. A conceptual approach is used to analyze legal doctrine and theoretical concepts such as legal protection, victimology, restorative justice, restitution, compensation, and institutional responsibility. This approach draws on scientific opinion and legal theory to clarify the meaning, scope, and purpose of criminal and civil legal protection for victims of sexual violence.

3. RESEARCH RESULTS AND DISCUSSION

1. Criminal Legal Protection for Female Students as Victims of Sexual Violence in Islamic Boarding Schools

Criminal legal protection is the primary mechanism used by the state to respond to acts of sexual violence against female students in Islamic boarding schools. In the Indonesian legal system, sexual violence is no longer merely considered a violation of morality or decency, but rather a serious crime that violates human rights and bodily autonomy. This paradigm shift is explicitly reflected in Law Number 12 of 2022 concerning Crimes of Sexual Violence (UU TPKS), which provides a comprehensive framework for criminal accountability and victim protection. From a criminal law perspective, protection for victims is realized through the prosecution and punishment of perpetrators. The Central Java Supreme Court Decision Number 238/PID.SUS/2025/PT SMG demonstrates the progressive application of criminal law, as the court upheld a heavy prison sentence against a boarding school supervisor who committed sexual violence against female students under his supervision. This decision affirms that religious status or institutional position does not exempt perpetrators from criminal responsibility. This decision also strengthens the principle of equality before the law, as mandated by Article 27 paragraph (1) of the 1945 Constitution.

However, despite increasingly stringent criminal sanctions, criminal law protection in practice still emphasizes a retributive justice model, which primarily focuses on punishment rather than comprehensive victim reparation. Victims are often positioned as mere witnesses in criminal proceedings, with limited participation in determining solutions that directly address their suffering. This situation demonstrates that while

criminal law plays a crucial role in prevention and accountability, it alone is insufficient to ensure comprehensive legal protection for victims of sexual violence.

Furthermore, in the context of Islamic boarding schools (*pesantren*), criminal law enforcement faces additional challenges. The closed nature of Islamic boarding schools, combined with the hierarchical power relationship between caregivers (guardians or *ustadz*) and students, often leads to delays in reporting and difficulties in establishing evidence. These obstacles underscore the need to strengthen procedural protections for victims, including confidentiality, psychological support, and protection from intimidation during criminal proceedings.

2. Civil Legal Protection and Fulfillment of Victims' Rights

Unlike criminal law, civil legal protection focuses on restoring the rights and dignity of victims through compensation, restitution, and rehabilitation. Civil protection is based on the principle that crime victims suffer measurable material and non-material losses that must be redressed (Rena Yulia, 2013: 91). Under Law Number 12 of 2022 concerning Crimes of Sexual Violence, restitution is explicitly recognized as a mandatory component of victim protection and is part of the perpetrator's legal responsibility.

Decree No. 238/PID.SUS/2025/PT SMG is significant because it explicitly recognizes restitution as part of the outcome of justice, signaling a shift towards a more victim-centered approach. However, the implementation of restitution and compensation remains inconsistent across cases. In many cases, restitution orders are not effectively enforced due to perpetrators' inability or unwillingness to pay, as well as the absence of robust institutional mechanisms to ensure compliance (Lilik Mulyadi, 2012: 389). From a civil liability perspective, this issue extends beyond individual perpetrators to include the potential liability of educational institutions. Islamic boarding schools (*pesantren*) that fail to provide a safe environment may be held institutionally liable based on negligence or neglect. However, legal practice in Indonesia has not fully developed this concept in cases involving Islamic boarding schools, resulting in limited accountability for institutional actors who indirectly enable sexual violence through weak oversight or concealment.

Furthermore, victims often face barriers to pursuing civil legal remedies due to social stigma, fear of retaliation, and a lack of legal awareness. Consequently, civil legal protection remains underutilized, despite its crucial role in restoring victims' physical, psychological, and social well-being.

3. Legal Barriers and Institutional Challenges in Islamic Boarding Schools

One of the most significant obstacles to effective legal protection for female Islamic boarding school students is the tension between formal state law and informal institutional norms within Islamic boarding schools. In some cases, internal dispute resolution mechanisms are prioritized over formal legal processes, resulting in informal resolutions that fail to meet standards of justice and legal accountability (Satjipto Rahardjo, 2009: 156). This practice undermines the rule of law and contradicts the state's obligation to protect children and vulnerable groups.

Furthermore, cultural and religious authorities often discourage victims from reporting abuse, as perpetrators are often respected figures in the community. This power imbalance not only silences victims but also creates an environment where sexual

violence can continue unchecked. The state's failure to adequately oversee Islamic boarding schools (pesantren) further exacerbates this problem, despite its constitutional obligation to ensure the protection of children's rights.

4. Towards an Integrated Model of Criminal and Civil Legal Protection

Based on the above analysis, it is clear that effective legal protection for female Islamic boarding school students as victims of sexual violence requires an integrated approach that combines criminal liability with civil legal remedies and institutional responsibility. Criminal law must continue to impose strict sanctions on perpetrators to ensure deterrence and justice, while civil law must be strengthened to guarantee restitution, compensation, and long-term recovery for victims.

The Central Java Supreme Court's decision No. 238/PID.SUS/2025/PT SMG sets an important judicial precedent, demonstrating that courts can play a proactive role in advancing victim-centered justice. However, judicial efforts must be supported by stronger law enforcement mechanisms, clearer institutional accountability, and increased state oversight of Islamic boarding schools.

Ultimately, legal protection for victims of sexual violence should not be limited to punishment alone, but should encompass rehabilitation, empowerment, and prevention. Ensuring the safety and dignity of female students in Islamic boarding schools is not only a legal obligation but also a moral and constitutional imperative.

This study finds that criminal law protection for female Islamic boarding school students as victims of sexual violence has been normatively strengthened following the enactment of Law Number 12 of 2022 concerning Crimes of Sexual Violence (UU TPKS). The law broadens the definition of sexual violence, strengthens procedural protections for victims, and affirms restitution as an integral part of criminal responsibility. Judicial practice reflects this development. The Central Java Supreme Court Decision Number 238/PID.SUS/2025/PT SMG demonstrates that Indonesian courts are increasingly willing to impose severe criminal sanctions on perpetrators within Islamic boarding schools, even when those perpetrators hold religious authority. This represents an important affirmation of the constitutional principle of equality before the law, as guaranteed by Article 27 paragraph (1) of the 1945 Constitution.

However, this study also found that criminal law protection is still dominated by a retributive orientation. Victims are still largely positioned as witnesses rather than as subjects of rights in the criminal process. Their involvement is limited to providing evidence, while their needs for reparation, participation, and empowerment are not fully accommodated in criminal procedural law. This situation indicates that criminal penalties alone are insufficient to provide comprehensive justice for victims of sexual violence.

This study found that civil legal protection is the weakest dimension of victim protection in cases of sexual violence in Islamic boarding schools. Although restitution and compensation are normatively guaranteed in the TPKS Law, their practical implementation remains inconsistent and often ineffective.

In the High Court decisions analyzed, restitution is formally recognized as part of the legal consequences imposed on perpetrators. However, this study found that there is no clear enforcement mechanism to ensure restitution is fulfilled when perpetrators lack financial capacity. As a result, victims often do not receive material or non-material compensation, even when there are favorable court decisions. Furthermore, this study

found that the institutional civil liability of Islamic boarding schools has not been optimally implemented. Legal responsibility continues to focus on individual perpetrators, while institutional negligence, such as failure to supervise, prevent, or report sexual violence, rarely results in legal consequences. This gap undermines prevention efforts and diminishes the accountability of educational institutions entrusted with the care of children.

This research identifies several systemic legal and institutional barriers that hinder effective legal protection for female students:

1. An imbalance of power between the victim and the perpetrator, especially if the perpetrator is a religious leader or caregiver who has moral and institutional authority.
2. Institutional silence and informal resolution practices, which prioritize the reputation of the Islamic Boarding School over victims' rights and legal accountability.
3. Limited state oversight of Islamic boarding schools, even though the state has a constitutional obligation to protect children from violence and exploitation.
4. Socio-cultural stigma and victim-blaming, which hinder reporting and perpetuate a culture of silence around sexual violence.

These barriers significantly contribute to reporting delays, evidentiary challenges, and limited access to justice for female students.

This study found that criminal and civil legal protection mechanisms operate in a fragmented and uncoordinated manner. Criminal sanctions are often imposed without being systematically linked to civil reparation measures such as restitution, rehabilitation, and long-term psychological support. Although the Central Java Supreme Court Decision No. 238/PID.SUS/2025/PT SMG demonstrates judicial awareness of the need for restitution; this approach has not been institutionalized as a consistent judicial standard. There are no uniform guidelines to ensure that every case of sexual violence results in criminal accountability and effective victim reparation.

Based on the above findings, this study concludes that:

1. Normatively, Indonesia has developed a progressive legal framework to address sexual violence against female students through the TPKS Law.
2. In practice, the implementation of civil legal protection—especially restitution and recovery—is far behind the enforcement of criminal law.
3. Institutionally, Islamic boarding schools are still poorly regulated in terms of legal accountability and preventive obligations.
4. From a judicial perspective, recent court decisions show progress but are still case-by-case and not systemic.

The main research result of this study is the identification of structural gaps between legal norms and legal practices, particularly in integrating criminal penalties with civil legal remedies and institutional responsibility.

4. CONCLUSION

This research reaffirms that sexual violence against female students in Islamic boarding schools (*pesantren*) is not only a criminal offense but also a serious violation of constitutional rights and international human rights principles. Despite the moral and educational ideals upheld by Islamic boarding schools, the occurrence of sexual violence within these institutions demonstrates that religious authority and institutional prestige do not inherently guarantee protection for vulnerable female students. From a normative

perspective, Indonesia has made significant progress in strengthening legal protection for victims of sexual violence through the enactment of Law Number 12 of 2022 concerning Crimes of Sexual Violence. This law represents a paradigm shift from a morality-based approach to a victim-centered and rights-based legal framework, which recognizes restitution, restoration, and protection as integral components of justice. Judicial practice, particularly the Central Java Supreme Court Decision Number 238/PID.SUS/2025/PT SMG further confirms that courts are increasingly willing to impose strict criminal sanctions on perpetrators within religious educational institutions.

However, this study concludes that criminal legal protection alone is insufficient to guarantee substantive justice for victims. The criminal process remains largely retributive and has not fully integrated restorative and rehabilitative dimensions. Victims often experience secondary victimization due to limited participation, inadequate psychological support, and prolonged legal proceedings. Furthermore, civil legal protection—particularly restitution, compensation, and long-term recovery—remains underdeveloped in practice. Although restitution is normatively guaranteed, enforcement mechanisms are weak, and the institutional responsibility of Islamic boarding schools has not been consistently recognized. This situation results in a fragmented protection system in which perpetrators may be punished, but victims are left without meaningful redress. This study ultimately concludes that the core legal problem lies in the mismatch between criminal accountability, civil redress, and institutional responsibility. Without an integrated legal framework that addresses these dimensions simultaneously, legal protection for female students as victims of sexual violence in Islamic boarding schools will remain partial and ineffective.

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